

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DAVID BURNS,

Petitioner,

v.

WARDEN RUSSELL, *et al.*,

Respondents.

Case No. 3:22-cv-00021-MMD-CLB

ORDER

Petitioner David Burns has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court dismisses this action because Burns did not pay the \$5.00 filing fee, nor did he submit an application to proceed in forma pauperis with a financial certificate and a copy of his inmate account statement, as required by 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2. Burns will need to commence a *new action* with either payment of the \$5.00 filing fee or filing a complete application to proceed in forma pauperis, along with a petition for a writ of habeas corpus. A preliminary review of the petition indicates that a promptly commenced new action would not suffer any difficulties under the one-year time limit of 28 U.S.C. § 2244(d)(1).

This is not the first time that the Court has dismissed an action brought by Burns for his failure either to pay the filing fee or to file an application to proceed in forma pauperis. The Court did the same recently in *Burns v. Russell*, Case No. 3:21-cv-00493-MMD-WGC. The Court thus repeats what Burns needs to do. He needs to commence a *new action*. In that new action, he needs to submit a petition for a writ of habeas corpus. In that new action, he also needs either to pay the \$5.00 filing fee or to file an application to proceed in forma pauperis, accompanied by a statement of his inmate account and a financial certificate completed and signed by the appropriate prison official.

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1 Burns also has filed a motion for appointment of counsel. (ECF No. 3.) The Court
2 denies the motion because the Court is dismissing the action for the reasons stated above.
3 However, this gives the Court the opportunity to reinforce its point. The Court may appoint
4 counsel to represent a *financially eligible* petitioner. See 18 U.S.C. § 3006A. If Burns does
5 not file a complete application to proceed in forma pauperis, then the Court cannot
6 determine that he is financially eligible for representation by counsel.

7 Reasonable jurists would not find this conclusion to be debatable or wrong, and the
8 Court will not issue a certificate of appealability.

9 It is therefore ordered that the Clerk of Court send Petitioner a blank form for an
10 application to proceed in forma pauperis for incarcerated litigants with instructions and a
11 blank habeas corpus petition form under 28 U.S.C. § 2254 with instructions.

12 It is further ordered that Petitioner's motion for appointment of counsel (ECF No. 3)
13 is denied.

14 It is further ordered that this action is dismissed without prejudice to Petitioner's
15 commencement of a new action in which he must either pay the filing fee in full or file a
16 complete application to proceed in forma pauperis, accompanied by a signed financial
17 certificate and a statement of his inmate account.

18 The Clerk of Court is directed to enter judgment accordingly and close this action.

19 It is further ordered that a certificate of appealability is denied.

20 DATED THIS 9th Day of February 2022.

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23 MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE